IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2899 of 1995

For Approval and Signature:

HON'BLE MR. JUSTICE ANANT S DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NR SOLANKI

Versus

UCO BANK

Appearance:

1. Special Civil Application No. 2899 of 1995

MR AJ SHASTRI for Petitioner No. 1

MR TUSHAR MEHTA for Respondent No. 1-2

CORAM : HON'BLE MR. JUSTICE ANANT S DAVE

Date of decision: 03/12/2004

ORAL JUDGEMENT

1. By way of the present petition under Article 226 of the Constitution of India, the petitioner has prayed for a writ of mandamus or any other writ, order or

direction, directing the respondent-Bank to promote the petitioner, in view of the promotional policy, to the clerical cadre, with consequential benefits.

2. It is the case of the petitioner that, though the petitioner is eligible and qualified to be appointed in the clerical cadre as per the promotional policy of the respondent-Bank, the case of the petitioner is not considered accordingly and, therefore, it is a case of discrimination on the ground that the similarly situated person, like the petitioner, was promoted and the petitioner was deprived of the said opportunity of being considered in the matter of promotion to the clerical cadre and, therefore, the action of the respondent-Bank is violative of Articles 14 and 16 of the Constitution of India.

3. According to the petitioner, in the year 1981, he was appointed to the post of peon on the basis of passing out Std. VIII examination by the petitioner. Subsequently, the petitioner had passed SSC Examination and further obtained a Degree of Bachelor of Arts during the service as peon in the year 1987. The petitioner further obtained a typing certificate in the year 1988 and continued to study further and, in the year 1992, obtained a Degree of Bachelor in Education. According to the petitioner, due to union rivalry, the respondent-Bank had issued a show cause notice, whereby, the petitioner was asked to explain about his educational qualification, which was higher than the required qualification, at the time of entry into the service on the post of peon in the year 1981 and, therefore, as per the said notice, it was stated that the petitioner had violated the conduct rules of the respondent-Bank, and, by suppressing the higher qualification, the petitioner had obtained the job of peon, which is, prima-facie, according to the Disciplinary Authority, a case of inflicting a penalty on the petitioner.

3.1 The petitioner pleaded for a mercy before the respondent-Bank and, in his reply, the petitioner had narrated the family circumstances and, particularly the fact that since the petitioner belonged to the Scheduled Caste community, and had not committed any other misconduct, and the non-disclosure of higher qualification at the time of entry into the service was not intentional and, therefore, he might be pardoned.

3.2 Accordingly, the disciplinary proceedings were dropped by the respondent-Bank and the petitioner continued to serve as peon in the cadre of subordinate

staff.

4. As per the submission of the learned advocate for the petitioner, the petitioner having higher qualification of graduation and certificate of typing, is qualified to be considered for appointment by way of promotion in a clerical cadre of the respondent-Bank. According to the learned advocate for the petitioner, since the disciplinary proceedings against the petitioner by the respondent-Bank were dropped, the petitioner was entitled to be considered for promotional avenue on the clerical cadre. According to the learned advocate for the petitioner, the petitioner acquired qualifications of Bachelor of Arts, with the principal subject of English, and also cleared the Degree examination of Bachelor of Education from the Gujarat University, with the selected subjects of English and Geography, and was qualified in the typing examination at a speed of 40 w.p.m. in English typing, and, therefore, with all those qualifications, the case of the petitioner could have been considered by the respondent-Bank.

4.1 The denial to consider the case of the petitioner, according to the learned advocate for the petitioner, amounts to an unreasonable and arbitrary exercise by the respondent-Bank and, particularly, one Shri S.N. Narechania, similarly situated person like the petitioner, who had not disclosed the higher qualification at the time of entry into the service as peon, subsequently was considered by the respondent-Bank and was promoted in the clerical cadre by the order dated 21st January 1995, and, by not treating the petitioner on par with the said Shri Narechania, the respondent-Bank has meted out a discriminatory treatment to the petitioner in the matter of equal opportunity for public employment in violation of Articles 14 and 16 of the Constitution of India and, therefore, appropriate directions may be issued to the respondent-Bank for considering the case of the petitioner for promotion to the clerical cadre.

5. The respondent-Bank has filed an affidavit-in-reply and resisted any relief to be granted to the petitioner, mainly, on the ground that there was suppression on the part of the petitioner by not disclosing the higher qualification at the time of entry into the service on the post of peon in the year 1981. According to the respondent-Bank, the petitioner had acquired higher qualification than the prescribed one, and, therefore, the petitioner had obtained the appointment by fraudulent means and, in view of the

Circular issued by the respondent-Bank, as a matter of policy, not to grant the benefit to the persons like the petitioner, who have suppressed the higher educational qualification at the time entry into the service, the action of the respondent-Bank was justified in denying the promotion to the petitioner to the clerical cadre. The said Circular dated 9th January 1991 was issued by the Personnel Department of the respondent-Bank to all the Branches and the Offices of the respondent-Bank.

5.1 According to the learned advocate for the respondent-Bank, it was the policy of the respondent-Bank not to recruit the candidates having higher qualification of the SSC, in view of the fact that a number of unemployed persons having lower qualification than the SSC are deprived of the employment and the posts like peon and other such posts in the subordinate staff service were meant only for the candidates having lower qualification than the SSC. The purpose of the said policy of the respondent-Bank was to give employment to such candidates having lower qualification than the SSC qualification. According to the learned advocate for the respondent-Bank, the case of the petitioner was earlier considered and, simply on the humanitarian ground, the respondent-Bank dropped the disciplinary proceedings against the petitioner on the petitioner pleading guilty about his conduct of non-disclosure of higher qualification at the time of entry into the service. Considering the case of the petitioner's higher qualification for promotion to the clerical cadre would amount to putting a premium on the misconduct of the petitioner and, therefore, the case of the petitioner does not deserve any consideration by this Court. The learned advocate for the respondent-Bank has, further, submitted that, as per the Circular dated 9th January 1991 issued by the respondent-Bank, referring to the communication of the Ministry of Finance, Government of India, it is clearly laid down that no weightage can be given to the suppressed educational qualification of the employee for the purpose of promotion. The stand taken by the respondent-Bank, according to the learned advocate for the respondent-Bank, is that the present case of the petitioner is not a case of denying the lower post to the petitioner having higher qualification, but, the case of petitioner is a case of suppression of higher qualification and securing the job meant for lower qualification. The idea to earmark the post of peon to the persons having lower qualification to the exclusion of the persons having higher qualification is to provide employment avenues to the persons having lower qualification.

5.2 It is, further, submitted that, since the petitioner had obtained the job on the post of peon by suppressing his higher qualification, he does not deserve any consideration by the Bank as well as by this Court in exercise of powers under Article 226 of the Constitution of India and, therefore, according to the learned advocate for the respondent-Bank, the petition deserves to be rejected.

6. Having heard the learned advocates for the parties, and, on going through the evidence on record, I find a considerable force in the submissions of the learned advocate for the respondent-Bank that the disciplinary proceedings against the petitioner were dropped in view of the petitioner pleading for a mercy by his reply dated 17th January 1987 produced by the respondent-Bank with its affidavit-in-reply. In the said reply dated 17th January 1987, it was specifically pleaded by the petitioner that he belonged to the economically weaker community like Scheduled Caste and his family consisted of parents, one sister of marriageable age, wife and daughter and the only source of livelihood is the income of the petitioner and, therefore, if the services of the petitioner are terminated, the petitioner would be ruined and completely uprooted, and such action would affect not only the petitioner but also the entire family members. The petitioner requested for a sympathetic consideration and to grant him a pardon from further action by the Disciplinary Authority.

6.1 In view of the aforesaid reply, the respondent-Bank, taking a sympathetic view, dropped the disciplinary proceedings and allowed the petitioner to continue to work on the post of peon and the petitioner is performing his duties as such with the respondent-Bank.

6.2 The example given by the learned advocate for the petitioner about granting some benefit to one Shri S.N. Narechania, and promoting him to the clerical cadre, might be a case in isolation and the said decision was based on pursuant to a direction given by this Court, vide its order dated 29th July 1992, in Special Civil Application No.3053 of 1991, wherein there was delay in availing of the Amnesty Scheme framed by the Bank, which pertains to such employees, who had not disclosed their higher qualification at the time of entering into the service, and Shri S.N. Narechania had not applied for grant of pardon within the specific time limit and, therefore, this Court had given a direction that Shri

S.N. Narechania may be given the benefit of amnesty scheme by condoning the delay and, beyond that, no further benefits were ordered to be given by this Court. However, the Bank had extended the benefits of Amnesty Scheme as per the Circular dated 8th March 1979 to Shri S.N. Narechania, and, thereafter, promoted him to the clerical cadre by the order dated 21st January 1995. It is settled law that canopy of Article 14 of the Constitution of India is not available to a wrong doer.

6.3 It is submitted in the affidavit-in-reply by the respondent-Bank that the idea to reserve the job of the peon to the persons having lower qualification to the exclusion of the persons having higher qualification, is to provide employment avenues to the persons having lower qualification, in as much as the persons having higher qualification have much more chances of employment as compared to those having the qualification of non-metric and, therefore, the respondent-Bank, as a matter of policy, reserved or preferred the lower qualified candidates for the job of peon. Therefore, this Court does not find that the said policy can be said to be arbitrary or unreasonable in any manner since it was floated with a good motive and there is a rational behind this policy in as much as the candidates with lower qualification, not having a good chance of employment in other area, can be given the job of peon and, therefore, when the petitioner having higher qualification obtained the job by suppressing his higher qualification and not disclosing the relevant materials, he has deprived the chance of other employees having lower qualification and eligible at the time of entry into the service and, therefore, the petitioner cannot be allowed to claim further chance of promotion and, therefore, the circular dated 9th January 1991 issued by the respondent-Bank excluding the candidates, like the petitioner, from the zone of consideration further in the matter of promotion to the clerical cadre, even though they have requisite qualification for the said job, is just, fair and reasonable.

7. Accordingly, the action of the respondent-Bank of not considering the case of the petitioner for promotion to the clerical cadre cannot be said to be unreasonable, arbitrary or discriminatory in any manner or in violation of Article 14 of the Constitution of India. No direction can be given or mandamus can be issued by this Court in exercise of power under Article 226 of the Constitution of India in favour of a person who has, admittedly, suppressed the vital fact about his educational qualification and pleaded guilty with a prayer to grant mercy, when the Disciplinary Authority initiated the

proceedings against the petitioner and, thereafter, sympathetically considered such plea, dropped the disciplinary proceedings, and continued the petitioner on the job of peon. In this view of the matter, there is no substance in the present petition and the petitioner is not entitled to any relief as prayed for.

8. As a result of foregoing discussion, the petition is rejected. Rule is discharged with no order as to costs.

(Anant S. Dave, J.)
(swamy)